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14 HOWARD JARVIS TAXPAYERS ASSOCIATION

15 and LAWRENCE SAND

16
17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **COUNTY OF LOS ANGELES – CENTRAL**

19 HOWARD JARVIS TAXPAYERS
20 ASSOCIATION, an association, and
21 LAWRENCE SAND, an elector,

22
23 Petitioners,

24
25 v.

26 DEAN LOGAN, in his official capacity as
27 LOS ANGELES COUNTY REGISTRAR-
28 RECORDER/COUNTY CLERK, and the
LOS ANGELES UNIFIED SCHOOL
DISTRICT BOARD OF EDUCATION,

Respondents.

Case No. **19STCP01722**

**VERIFIED PETITION FOR WRIT OF
MANDATE**

IMMEDIATE ACTION REQUIRED:
ELECTION LAW MATTER ENTITLED
TO CALENDAR PREFERENCE
PURSUANT TO C.C.P. § 35, ELECTIONS
CODE § 13314, C.C.P. §§ 1085, 1086.

Hearing Date:
Hearing Time:
Department:

Petition filed:
Critical Date:

Petitioners HOWARD JARVIS TAXPAYERS ASSOCIATION, an association, and LAWRENCE SAND, an elector, ("Petitioners") by this verified petition declare and allege as follows:

INTRODUCTION

1. First by gross incompetence, and then by complete and total disregard of the California Elections Code and California's open meeting law (the "Ralph M. Brown Act"), Respondents are presently conducting an unlawful election proposing a property tax for the benefit of Respondent Los Angeles Unified School District ("LAUSD"), designated as Measure EE.

2. At this point, it is unclear how a homeowner will be taxed or how much revenue the tax will generate. This is all completely the fault of Respondent LAUSD and its officers, whose recent actions have served to inject untold voter confusion into their desire to impose increased taxes on property owners.

3. Had Respondent LOGAN, the Registrar of Voters of Los Angeles County followed the Election Code, this uncertainty could have been avoided. The Court's assistance is needed to enforce voter rights and reduce wasted public funds as soon as possible. LAUSD can then figure out - unambiguously - what it wants to ask voters to approve and resubmit the proposed tax measure at a future ballot.

4. If the election is allowed to proceed, millions of dollars of taxpayer funds will be wasted on an unlawfully-conducted election. In addition, millions of dollars will be wasted on campaigns both for and against the Measure. More importantly, voters will be misled about the impact of their vote.

5. If the Court does not act now, it may be required to invalidate and nullify the results of the election (if Measure EE is approved by the voters). In particular, even a technical violation of the Brown Act results in the invalidity of a voter-approved measure. (*Hernandez v. Town of Apple Valley* (2017) 7 Cal.App.5th 194, 214.) Here, the Brown Act violation is complete and total non-compliance, not a mere technical violation.

6. Therefore, Petitioners hereby petition this Court for issuance of a peremptory writ of mandate directing Respondent LOGAN to cease all processing of returned ballots, and counting

1 of voted ballots for the June 4, 2019 Special Election in the Los Angeles Unified School District
2 on Measure EE, or in the alternative to issue a peremptory writ of mandate prohibiting Respondents
3 from taking any action to certify and declare that the results of such election is the enactment of
4 Measure EE.

5 **PARTIES**

6 7. Petitioner HOWARD JARVIS TAXPAYERS ASSOCIATION is a nonprofit public
7 benefit corporation comprised of over 200,000 California taxpayers, organized and existing under
8 the laws of California for the purposes, among others, of engaging in civil litigation on behalf of
9 its members and all California taxpayers, to ensure their rights as taxpayers and voters. Its
10 membership includes residents within the boundaries of LAUSD.

11 8. Petitioner LAWRENCE SAND is a qualified, registered voter under the laws of the
12 State of California and is an elector within the meaning of Elections Code sections 321 and
13 13314(a)(1).

14 9. Respondent DEAN LOGAN (“Respondent LOGAN”) is the County of Los Angeles
15 Registrar-Recorder/County Clerk and is the elections official for the County of Los Angeles. It is
16 Respondent LOGAN’s duty to conduct the June 4, 2019 Special Election in the Los Angeles
17 Unified School District and to certify the results of that election. He is named herein as Respondent
18 in his official capacity only.

19 10. Respondent LOS ANGELES UNIFIED SCHOOL DISTRICT BOARD OF
20 EDUCATION (“Respondent LAUSD”) is the official governing body of the Los Angeles Unified
21 School District and is the “legislative body” of that local government within the meaning of the
22 Ralph M. Brown Act. It is named in its official capacity only.

23 11. DOES 1-20 are unknown at this time but are alleged to have acted in their official
24 capacity in carrying out the actions resulting in the violations of law and imposition of damages as
25 alleged herein.

26 **JURISDICTION AND VENUE**

27 12. Pursuant to Elections Code section 13314(a)(1), “[a]ny elector may seek a writ of
28 mandate alleging that an error or omission has occurred, or is about to occur, in the placing of any

1 name on, or in the printing of, a ballot, sample ballot, voter pamphlet, or other official matter.” An
2 “elector” means “any person who is a U.S. citizen, at least 18 years of age, and a resident of an
3 election precinct at least 15 days prior to an election.” (Elec. Code § 321.) Petitioner LAWRENCE
4 SAND is an “elector” in accordance with the law and therefore has standing to seek such a writ of
5 mandate. Similarly, Code of Civil Procedure sections 1085 and 1086 authorize the court to issue a
6 writ of mandate to compel the performance of a ministerial duty or to prohibit a violation of a
7 ministerial act to a person beneficially interested in such a writ. Petitioners are both beneficially
8 interested in compliance with state law.

9 13. This Court has jurisdiction over this matter. Because the petition seeks to compel an
10 act of the County of Los Angeles Registrar-Recorder/County Clerk, who is the elections official
11 situated in the County of Los Angeles, and because the forthcoming election is taking place in the
12 County of Los Angeles, venue for this proceeding is proper in the Superior Court of California for
13 the County of Los Angeles.

14 14. Pursuant to Elections Code section 13314(a)(3) and Code of Civil Procedure section
15 35, this action is an urgent election matter and must accordingly have priority over all other civil
16 matters.

17 **FACTS**

18 15. Section 4 of Article XIII A of the California Constitution and Sections 50075 and
19 50079 of the Government Code authorize a school district to seek voter approval of a special tax
20 on parcels of property within the district for the benefit of the district. The “special tax” must be
21 approved by two-thirds of the voters voting in an election called for that purpose.

22 16. On February 28, 2019, Respondent LAUSD held a public meeting and considered
23 whether such a tax should be proposed and an election called. Different proposed taxes were
24 discussed as was the timing of the election. Public testimony was received on the issue. Ultimately,
25 Respondent LAUSD decided to adopt a Resolution ordering an election for June 4, 2019 and
26 proposing a special parcel tax by incorporating the “full text” of the tax as Exhibit B to the
27 Resolution and stated to be “hereby approved and adopted by the Board of Education.” A true and
28 correct copy of the LAUSD Resolution, including its three Exhibits (A, B & C) is attached hereto

1 and incorporated herein as **Exhibit A**.

2 17. Interestingly, during the February 28, 2019 meeting, one or more Board members
3 asked district staff and counsel if any changes to the Resolution could be made after Board approval.
4 The LAUSD Board was correctly informed that any change to the Resolution would require further
5 Board action, in a public meeting, and all would have to be done before March 13, 2019, in order
6 to comply with both the Brown Act and the Elections Code. A true and correct video recording of
7 the February 28, 2019 is available at http://lausd.granicus.com/MediaPlayer.php?clip_id=1089.

8 18. On or about March 5, 2019, the Resolution with its Exhibits as adopted by LAUSD
9 was transmitted to Respondent LOGAN. The Resolution and Exhibits were date-stamped by
10 Respondent LOGAN's office that same day. A true and correct copy of the date-stamped
11 Resolution is attached hereto and incorporated herein as **Exhibit B**. The LAUSD special parcel
12 tax was designated Measure EE.

13 19. As evidenced by **Exhibits A and B**, the tax to be imposed was stated as:

14 "The parcel tax of \$0.16 per square foot of building improvements per year
15 shall be levied on every parcel of taxable real property. 'Parcel of taxable
16 real property' means any unit of real property in L.A. Unified that receives
17 a separate tax bill for ad valorem property taxes from the Los Angeles
18 County Treasurer-Tax Collector's Office. *'Improved building square
19 footage' means the square footage of habitable main square footage as
20 measured by the Los Angeles County Assessor and is maintained in the
21 Assessor's electronic reports.* All property that is otherwise exempt from
22 or on which are levied no ad valorem property taxes in any year shall also
23 be exempt from the parcel tax in such year."

24 (Emphasis added.)

25 20. California Code of Regulations, title 24, section 201 defines the term "habitable
26 space" as "a space in a building for living, sleeping, eating, or cooking. Bathrooms, toilet rooms,
27 closets, halls, storage or utility spaces and similar areas are not considered habitable spaces."

28 21. At the February 28, 2019 LAUSD Board meeting, staff further explained to the
Board that the term "habitable space" would exclude "garages, pool houses, cabanas, and other
non-structural improvement." (See "Strategic Planning for Adequate Funding of Public Education
– A focus on Local Revenue Strategy" presented to Respondent LAUSD and attached hereto and

1 incorporated herein as **Exhibit C**).

2 22. In short, Respondent LAUSD enacted a Resolution that would impose a parcel tax
3 on residential real property, but only on the square footage of such residence that is “habitable.”
4 For a homeowner, the exception of non-habitable space is significant, for example, a 900 square
5 foot garage, if taxed, would cost \$144 per year.

6 23. The California Elections Code sets out specific requirements in order for a school
7 district to refer a measure to the ballot. Most pertinent to the instant matter is that such a Resolution
8 calling for an election and proposing the text of the measure to be presented to the voters for their
9 approval must be adopted not less than 88 days before the proposed election date. For the June 4,
10 2019 election, the 88-day deadline was March 8, 2019. After passage of such a Resolution, the
11 school district could rescind or amend the prior Resolution up until 83 days before the election.
12 Here, that date was March 13, 2019 (Elec. Code § 9605). Both of these dates were fully known to
13 Respondents as they were publicized and referenced in the materials provided to the LAUSD Board
14 at the February 28, 2019 meeting.

15 24. The Ralph M. Brown Act requires that meetings of public bodies shall be open and
16 public, and that notice shall be given before official acts are taken. In particular, the Brown Act
17 has specific public disclosure requirements for any matter involving a proposed tax (Gov. Code §
18 54954.6), specifically that the public be informed:

19 (A) The amount or rate of the tax. If the tax is proposed to be increased from any
20 previous year, the joint notice shall separately state both the existing tax rate and
21 the proposed tax rate increase.

22 (B) The activity to be taxed.

23 (C) The estimated amount of revenue to be raised by the tax annually.

24 (D) The method and frequency for collecting the tax.

25 (E) The dates, times, and locations of the public meeting and hearing described in
26 subdivision (a).

27 25. On March 11, 2019, LAUSD Superintendent Austin Beutner sent to Respondent
28 LOGAN a letter requesting that Respondent LOGAN significantly alter the Board-approved
language of Measure EE. A true and correct copy of this letter is attached hereto and incorporated
herein as **Exhibit D**.

1 26. Presumably in response to Beutner’s letter, Respondent LOGAN’s office date-
2 stamped the single page of the “full text” of the tax measure that was changed on March 11, 2019.
3 A true and correct copy of the Resolution now containing date-stamps of both March 5 and March
4 11, 2019 is attached hereto and incorporated herein as **Exhibit E**. This is now the tax measure that
5 the voters are asked to approve as Measure EE for the June, 4, 2019 election, as this text was printed
6 in the Sample Ballot sent to all voters.

7 27. The text Beutner submitted and Respondent LOGAN accepted, unlawfully changed
8 the tax proposal as follows:

9 The parcel tax of \$0.16 per square foot of building improvements per year
10 shall be levied on every parcel of taxable real property. ‘Parcel of taxable
11 real property’ means any unit of real property in L.A. Unified that receives
12 a separate tax bill for ad valorem property taxes from the Los Angeles
13 County Treasurer-Tax Collector’s Office. ***‘Improved building square
14 footage’ means the square footage of all buildings or structures erected
15 on or affixed to the land.*** All property that is otherwise exempt from or on
16 which are levied no ad valorem property taxes in any year shall also be
17 exempt from the parcel tax in such year.

18 (Emphasis added).

19 28. As it stands, voters cannot know what Measure EE lawfully proposes, but if this is
20 Measure EE, the property tax would now apply to ALL types of real property with any building or
21 structure (e.g. commercial, industrial, warehouse, hospital, recreational, etc.) instead of just
22 residential “habitable” property. Moreover, the tax would now apply to ALL buildings or structures
23 regardless of the habitability of such a structure (e.g. homeowner garages, cabanas, poolhouses,
24 etc.) despite the public discussion and Board approval of an intent to exempt such non-habitable
25 property.

26 29. Worse yet, these significant changes were NOT made by the Respondent LAUSD
27 Board in a public meeting after notice and in compliance with the Brown Act. No one has ever
28 determined how much revenue this “new” tax would generate, also in violation of the Brown Act.
Indeed, the ballot materials that were prepared in connection with the tax measure approved by the
Board on February 28, 2019, predicting revenue of approximately \$500 million annually are most-
assuredly now wrong (See Exhibit A to the enacted LAUSD Board Resolution on February 28,

2019, attached hereto as **Exhibit A.**)

30. Respondent LOGAN should never have accepted the Beutner letter as the Elections Code requires that “the order of election shall be amended or withdrawn *upon the filing of a resolution by the legislative body stating the specifics concerning the amendment or withdrawal. The resolution shall be filed with the election official not later than the 83rd day prior to the election.*” (Elec. Code § 9605, emphasis added.) Obviously, the Buetner letter was not a LAUSD Board resolution. Such a resolution would have been required to be submitted by March 13, 2019.

31. Petitioners have no explanation for why LAUSD did not schedule a Board meeting to amend its prior resolution on or before March 13, 2019, when it appears that it had adequate time to do so.

32. Petitioners are informed and believe that Respondent LAUSD is now aware that the Beutner amendment also includes a significant error by eliminating the “garage/parking” exemption. The fiscal impact of that omission is believed to be significant.

33. The agenda for the May 7, 2019 meeting of the Los Angeles Unified School District Board of Education, posted late Friday on May 3, 2019, includes an item “Requested by Superintendent” regarding Measure EE (Sup Res 008-18/19). No text of the proposal was provided at that time but was promised to be disclosed sometime on Monday, before the Tuesday meeting. A true and correct copy of the agenda for the May 7, 2019 meeting of the Los Angeles Unified School District Board of Education is attached hereto as **Exhibit F**. Petitioners reasonably believe that Respondents will again attempt to change Measure EE at that meeting, but now well within the 83-day limit provided for in the Elections Code (i.e March 13, 2019).

34. According to Respondent LOGAN’s “Calendar of Events” for the June 4, 2019 Election, Vote by Mail Ballots will start to be delivered to voters on May 6, 2019. A true and correct copy of Respondent LOGAN’s “Calendar of Events” is attached hereto and incorporated herein as **Exhibit G**. Processing of such ballots returned to the registrar can commence on May 20, 2019.

35. Respondent LOGAN has 30 days to certify the results of the election (Elec. Code § 15372). However, Respondent LOGAN’s calendar indicates that he intends to certify the election

1 result on June 21, 2019.

2 36. Petitioners, and indeed all voters and taxpayers in the LAUSD, are irreparably
3 harmed if this election is allowed to proceed. At this point, it is not even clear what Measure EE
4 taxes. No one really knows how much revenue the uncertain tax will generate. Millions will be
5 wasted on an election that will be invalidated if Measure EE is passed. And, if Measure EE is
6 approved and Respondent LOGAN certifies the election result, taxpayers may be required to pay
7 the illegal tax and seek refunds under the general rule that courts will not enjoin the collection of a
8 tax.

9 **FIRST CAUSE OF ACTION**

10 **PEREMPTORY WRIT OF MANDATE**

11 **(Pursuant to Code of Civil Procedure sections 1085 and 1086; Elections Code section 13314)**

12 37. Petitioner realleges and incorporates herein by reference the allegations of
13 paragraphs 1 through 33, inclusive.

14 38. This Court is authorized to issue a peremptory writ of mandate to prevent an error
15 or omission from occurring, upon being presented with proof that the error, omission, or neglect is
16 in violation of the Elections Code or the Constitution, and that issuance of the writ will not
17 substantially interfere with the conduct of the election. (Elections Code section 13314(a).)

18 39. Respondent LAUSD violated Elections Code section 9605 when it attempted to
19 amend a prior Resolution of the LAUSD Board with a letter submitted by its Superintendent instead
20 of after a public meeting required under the Brown Act and by specific resolution as required by
21 Elections Code section 9605.

22 40. Respondent LOGAN violated Elections Code section 9605 when he accepted the
23 Beutner letter as an amendment without demanding a new LAUSD Board resolution specifically
24 identifying the change. Thus, LOGAN's error is that the text of Measure EE is now on the ballot
25 and presented to the voters despite the fact that that version has never been approved by the LAUSD
26 Board. In short, the LAUSD election itself is unauthorized and unlawful.

27 41. Petitioner has no other plain, speedy, or adequate remedy at law, and Petitioner has
28 no remaining administrative remedies to exhaust.

1 **SECOND CAUSE OF ACTION**

2 **PEREMPTORY WRIT OF MANDATE**

3 **(Pursuant to Code of Civil Procedure section 1085, 1086; Elections Code section 13314)**

4 42. Petitioner realleges and incorporates herein by reference the allegations of
5 paragraphs 1 through 41, inclusive.

6 43. Petitioners are informed and believe, and thereon allege, that on May 7, 2019,
7 Respondent LAUSD will again alter the approved language of Measure EE, and will do so “after
8 the 83rd day prior to the election” in violation of Elections Code section 9605.

9 44. Based on Respondent LOGAN’s prior disregard of Elections Code section 9605,
10 Petitioners believe and thereon allege, that he will accept the action of Respondent LAUSD as
11 another amendment of Measure EE. If this action is not prohibited by this Court irreparable injury
12 will be inflicted on Petitioners and more broadly the voters of LAUSD by another amendment to
13 the text of Measure EE in violation of the Elections Code.

14 45. Petitioner has no other plain, speedy, or adequate remedy at law, and Petitioner has
15 no remaining administrative remedies to exhaust

16 **PRAYER FOR RELIEF**

17 **WHEREFORE**, Petitioners pray for the following relief:

18 1. That this Court issue a peremptory writ of mandate directing Respondent LOGAN
19 to cease all actions associated with the processing of mail ballots received and counting of precinct
20 voted ballots for the June 4, 2019 Special Election in the Los Angeles Unified School District on
21 Measure EE;

22 2. In the alternative, to issue a peremptory writ of mandate prohibiting Respondents
23 from taking any action to certify and declare the results of such election;

24 3. Further, that this Court issue a peremptory writ of mandate directing Respondent
25 LOGAN to reject any attempt by Respondent LAUSD to further amend Measure EE after March
26 13, 2019, including the action Respondent LAUSD is likely to take on May 7, 2019;

27 4. That this Court issue a peremptory writ of mandate directing Respondent LAUSD
28 to stop or rescind any attempt to further amend Measure EE after March 13, 2019, including the

1 action LAUSD is likely to take on May 7, 2019;

2 5. For costs of suit incurred herein;

3 6. For statutory attorneys' fees, as applicable, pursuant to Code of Civil Procedure
4 section 1021.5; and

5 7. For such further relief as this Court deems just and proper.

6 Dated: May 7, 2019.

BELL, McANDREWS & HILTACHK, LLP

7
8
9 By:  _____

THOMAS W. HILTACHK

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11 Attorneys for Petitioners

12 HOWARD JARVIS TAXPAYERS ASSOCIATION

13 and LAWRENCE SAND
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VERIFICATION

I, LAWRENCE SAND, am the Petitioner in the instant action. I have read the foregoing Verified Petition for Writ of Mandate and accompanying Memorandum of Points and Authorities and know their contents. I further am a registered voter under the laws of the State of California and an elector within the meaning of Elections Code sections 321 and 13314(a)(1). The matters stated in the Petition for Writ of Mandate and accompanying Memorandum of Points and Authorities are true of my own knowledge except as to those matters which are stated upon information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 6, 2019 at Los Angeles, California


LAWRENCE SAND